

Thomas Dowd, Administrator
Office of Policy Development and Research
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-5641
Washington, DC 20210
Phone: 202-693-3700

March 1, 2008

Dear Administrator Dowd:

Comments for proposed rule **RIN 1205-AB55**:

These comments are made on behalf of the 350 custom harvesters that are members of the U.S. Custom Harvesters, Inc. Association. U.S. custom harvesters harvest 50% of the wheat, 25% of the feed corn, 50% of the corn silage, and 25% of the cotton in the United States.

Processing Improvements

We would agree that the need to streamline the application procedure for an H2-A worker and the elimination of the duplication of activities currently performed by the State Workforce Agencies (SWA's) and the Department's Employment and Training Administration (ETA).

Application Fee & Advertising

We agree with the proposed rule change to increase the advertisements from two newspapers to three newspapers and placing the advertisements less than 120 days and no later than 75 days prior to the need. This will enhance the ability of an eligible U.S. worker to identify and apply for agricultural job openings before the jobs begin. The increase in the cost of \$500 - \$1,850 for each employer to meet the advertising and recruitment requirements for a job opportunity and the increase in application fees would be good trade-off for the elimination of the 50% rule.

Employment Eligibility Verification and Recruitment

We would ask the DOL/ETA to change the wording in the proposed rule when identifying an eligible U.S. worker. We would request that when the SWA's job orders are placed, U.S. workers are identified as **qualified eligible U.S. workers**. The U.S. custom harvester must have U.S. workers that are able and qualified to obtain a CDL drivers license. The eligible U.S. worker has to be able and qualified to be insured by the custom harvester's insurance company. The insurance companies are dictating which employees the custom harvester can hire.

Wage Rate

We suggest that the AEW wage rate be derived by using data from the Occupational Employment Survey (OES). We agree there should be a \$7.25 an hour floor for any AEW wage paid to an entry level worker. The final rule should allow custom harvesters to pay experienced workers and ones that return every year more than the AEW wage without having to pay every worker that increased AEW wage. Experienced and returning workers are more productive, safer and the insurance companies will insure them as CDL drivers.

Housing Inspections

We support the wording in the proposed rule to change the days for SWA's housing inspections to no more than 75 days and no fewer than 60 days prior to the date of need of the worker.

Transportation

We request a change in the proposed rule concerning the Department's policy that requires employers to pay 100% of the worker's transportation costs from the worker's home to the place

of employment. We would ask the Department of Labor to change its policy and require the workers to pay 50% of their transportation cost. We believe that H2-A workers benefit greatly from their opportunity to work in the United States and should pay one-half of their transportation costs from their home to their place of employment.

Auditing

Title 29, Chapter 20, Migrant and Seasonal Agricultural Worker Protection, Sec. 1803 (a)(3)(E)
Applicability of chapter.


We faxed letters dated April 1, 2006, and sent letters dated May 1, 2006, to the Dallas, Texas and Chicago, Illinois Regional Administrators of the DOL/ETA and asked them for an interpretation of Chapter 20 Sec. 1803 (a)(3)(E). During 2007, we also had three U.S. Senators contact the DOL/ETA. The question we asked was: Are custom harvesters exempt from all the rules in Chapter 20 as is stated in Sec. 1803 (a)(3)(E)? To date, we have not received an answer to our question.

Our Interpretation of Chapter 20 Sec. 1803 (a)(3)(E)

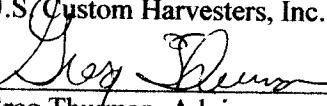
Under 29 U.S.C. Chapter 20 Sec. 1803 (a)(3)(E) it states: (a) the following persons are not subject to this rule: (3)(E) any custom combining, hay harvesting or sheep shearing operation. Accordingly, 1803 excludes persons engaged in custom combining and hay harvesting from the requirements of Chapter 20 of Title 29. In addition, the definitions section 1802 of Chapter 20, excludes H2-A Visa holders from the Migrant and Seasonal Workers Protection requirement of Chapter 20. 29 U.S.C. 1802 (8)(B)(ii) and 29 U.S.C. 1802 (10)(B)(iii) states: The term "migrant/seasonal agricultural worker" does not include any temporary nonimmigrant alien who is authorized to work in agricultural employment in the United States under sections 1101 (a)(15)(H)(ii) and 1184 (c) of title 8. Section 1101 (a)(15)(ii)(a) provides authorization for agricultural workers to enter the U.S. on an H2-A Visa. Custom harvesting crews enter the U.S. on an H2-A Visa. Therefore, we believe custom harvesting crews are excluded from the requirements of Chapter 20.

The U.S. Custom Harvesters, Inc. Association requests the DOL/ ETA Administration to address the issue of the interpretation of Chapter 20 1803 (a)(3)(E) when they publish the final rule on RIN 1205-AB55.

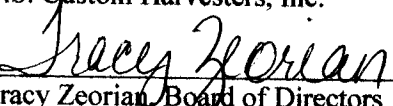
Sincerely,



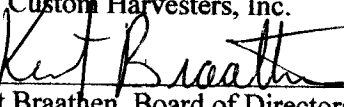
Al Lutz, President
U.S. Custom Harvesters, Inc.



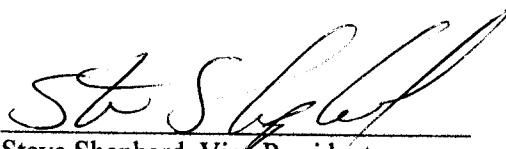
Greg Thurman, Advisor
U.S. Custom Harvesters, Inc.



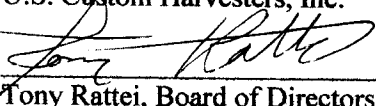
Tracy Zeorian, Board of Directors
U.S. Custom Harvesters, Inc.




Kent Braathen, Board of Directors
U.S. Custom Harvesters, Inc.



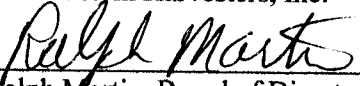
Steve Shepherd, Vice President
U.S. Custom Harvesters, Inc.



Tony Rattei, Board of Directors
U.S. Custom Harvesters, Inc.



Bruce Hines, Board of Directors
U.S. Custom Harvesters, Inc.



Ralph Martin, Board of Directors
U.S. Custom Harvesters, Inc.